



General Assembly

***Substitute Bill No. 6884***

*January Session, 2001*

***AN ACT ESTABLISHING A STATUTE OF LIMITATIONS ON MAKING A CLAIM AGAINST THE SECOND INJURY FUND FOR REIMBURSEMENT.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1       Section 1. Subdivision (2) of subsection (a) of section 31-306 of the  
2       general statutes is repealed and the following is substituted in lieu  
3       thereof:

4       (2) To those wholly dependent upon the deceased employee at the  
5       date of [his] injury, a weekly compensation equal to seventy-five per  
6       cent of the average weekly earnings of the deceased calculated  
7       pursuant to section 31-310, as amended by this act, after such earnings  
8       have been reduced by any deduction for federal or state taxes, or both,  
9       and for the federal Insurance Contributions Act made from such  
10      employee's total wages received during the period of calculation of the  
11      employee's average weekly wage pursuant to said section 31-310, as of  
12      the date of the injury but not more than the maximum weekly  
13      compensation rate set forth in section 31-309 for the year in which the  
14      injury occurred or less than twenty dollars weekly. (A) The weekly  
15      compensation rate of each dependent entitled to receive compensation  
16      under this section as a result of death arising from a compensable  
17      injury occurring on or after October 1, 1977, shall be adjusted annually  
18      as provided in this subdivision as of the following October first, and  
19      each subsequent October first, to provide the dependent with a cost-of-

20 living adjustment in [his] the dependent's weekly compensation rate as  
21 determined as of the date of the injury under section 31-309. If the  
22 maximum weekly compensation rate, as determined under the  
23 provisions of said section 31-309, to be effective as of any October first  
24 following the date of the injury, is greater than the maximum weekly  
25 compensation rate prevailing at the date of the injury, the weekly  
26 compensation rate [which] that the injured employee was entitled to  
27 receive at the date of the injury or October 1, 1990, whichever is later,  
28 shall be increased by the percentage of the increase in the maximum  
29 weekly compensation rate required by the provisions of said section  
30 31-309 from the date of the injury or October 1, 1990, whichever is  
31 later, to such October first. The cost-of-living increases provided under  
32 this subdivision shall be paid by the employer without any order or  
33 award from the commissioner. The adjustments shall apply to each  
34 payment made in the next succeeding twelve-month period  
35 commencing with the October first next succeeding the date of the  
36 injury. With respect to any dependent receiving benefits on October 1,  
37 1997, with respect to any injury occurring on or after July 1, 1993, and  
38 before October 1, 1997, such benefit shall be recalculated to October 1,  
39 1997, as if such benefits had been subject to recalculation annually  
40 under this subparagraph. The difference between the amount of any  
41 benefits [which] that would have been paid to such dependent if such  
42 benefits had been subject to such recalculation and the actual amount  
43 of benefits paid during the period between such injury and such  
44 recalculation shall be paid to the dependent not later than December 1,  
45 1997, in a lump-sum payment. The employer or [his] its insurer shall  
46 be reimbursed by the Second Injury Fund, as provided in section 31-  
47 354, for adjustments, including lump-sum payments, payable under  
48 this subparagraph for deaths from compensable injuries occurring on  
49 or after July 1, 1993, and before October 1, 1997, [upon presentation of]  
50 provided (i) for claims filed on or after the effective date of this act, the  
51 employer or its insurer notifies the custodian of the fund by certified  
52 mail no later than one calendar year after the date the claim is initially  
53 filed or, in the case of a contested claim, no later than one year after the  
54 finding of compensability, and provided further, the employer or its

55 insurer presents any vouchers and information that the Treasurer shall  
56 require, and (ii) for claims filed prior to the effective date of this act,  
57 the employer or its insurer notifies the custodian of the fund by  
58 certified mail no later than one calendar year from the effective date of  
59 this act, and provided further, the employer or its insurer presents any  
60 vouchers and information that the Treasurer shall require. (B) The  
61 weekly compensation rate of each dependent entitled to receive  
62 compensation under this section as a result of death arising from a  
63 compensable injury occurring on or before September 30, 1977, shall be  
64 adjusted as of October 1, 1977, and October 1, 1980, and thereafter, as  
65 provided in this subdivision to provide the dependent with partial  
66 cost-of-living adjustments in [his] the dependent's weekly  
67 compensation rate. As of October 1, 1977, the weekly compensation  
68 rate paid prior to October 1, 1977, to the dependent shall be increased  
69 by twenty-five per cent. The partial cost-of-living adjustment provided  
70 under this subdivision shall be paid by the employer without any  
71 order or award from the commissioner. In addition, on each October  
72 first, the weekly compensation rate of each dependent as of October 1,  
73 1990, shall be increased by the percentage of the increase in the  
74 maximum compensation rate over the maximum compensation rate of  
75 October 1, 1990, as determined under the provisions of section 31-309  
76 existing on October 1, 1977. The cost of the adjustments shall be paid  
77 by the employer or [his] its insurance carrier who shall be reimbursed  
78 [therefor] for such payments from the Second Injury Fund as provided  
79 in section 31-354, [upon presentation of] provided (i) for claims filed  
80 on or after the effective date of this act, the employer or its insurer  
81 notifies the custodian of the fund by certified mail no later than one  
82 calendar year after the date the claim is initially filed or, in the case of a  
83 contested claim, no later than one year after the finding of  
84 compensability, and provided further, the employer or its insurer  
85 presents any vouchers and information that the Treasurer shall  
86 require, and (ii) for claims filed prior to the effective date of this act,  
87 the employer or its insurer notifies the custodian of the fund by  
88 certified mail no later than one calendar year from the effective date of  
89 this act, and provided further, the employer or its insurer presents any

90 vouchers and information that the Treasurer shall require.

91 Sec. 2. Subsection (c) of section 31-307a of the general statutes is  
92 repealed and the following is substituted in lieu thereof:

93 (c) On and after October 1, 1997, the weekly compensation rate of  
94 each employee entitled to receive compensation under section 31-307  
95 as a result of an injury sustained on or after July 1, 1993, [which] that  
96 totally incapacitates the employee permanently, shall be adjusted as  
97 provided in this subsection as of October 1, 1997, or the October first  
98 following the injury date, whichever is later, and annually on each  
99 subsequent October first, to provide the injured employee with a cost-  
100 of-living adjustment in [his] the injured employee's weekly  
101 compensation rate as determined as of the date of injury under section  
102 31-309. If the maximum weekly compensation rate, as determined  
103 under the provisions of said section 31-309, to be effective as of any  
104 October first following the date of the injury, is greater than the  
105 maximum weekly compensation rate prevailing as of the date of  
106 injury, the weekly compensation rate [which] that the injured  
107 employee was entitled to receive as of the date of injury shall be  
108 increased by the percentage of the increase in the maximum weekly  
109 compensation rate required by the provisions of said section 31-309  
110 from the date of the injury to such October first. The cost-of-living  
111 adjustments provided under this subdivision shall be paid by the  
112 employer without any order or award from the commissioner. The  
113 adjustments shall apply to each payment made in the next succeeding  
114 twelve-month period commencing with October 1, 1997, or the  
115 October first next succeeding the date of injury, whichever is later.  
116 With respect to any employee receiving benefits on October 1, 1997,  
117 with respect to any such injury occurring on or after July 1, 1993, and  
118 before October 1, 1997, or with respect to any employee who was  
119 adjudicated to be totally incapacitated permanently subsequent to the  
120 date of [his] injury or is totally incapacitated permanently due to the  
121 fact that the employee has been totally incapacitated by such an injury  
122 for a period of five years or more, such benefit shall be recalculated to  
123 October 1, 1997, to the date of such adjudication or to the end of such

124 five-year period, as the case may be, as if such benefits had been  
125 subject to recalculation annually under the provisions of this  
126 subsection. The difference between the amount of any benefits [which]  
127 that would have been paid to such employee if such benefits had been  
128 subject to such recalculation and the actual amount of benefits paid  
129 during the period between such injury and such recalculation shall be  
130 paid to the dependent not later than December 1, 1997, or thirty days  
131 after such adjudication or the end of such period, as the case may be, in  
132 a lump-sum payment. The employer or [his] its insurer shall be  
133 reimbursed by the Second Injury Fund, as provided in section 31-354,  
134 for adjustments, including lump-sum payments, payable under this  
135 subsection for compensable injuries occurring on or after July 1, 1993,  
136 and before October 1, 1997, [upon presentation of] provided (1) for  
137 claims filed on or after the effective date of this act, the employer or its  
138 insurer notifies the custodian of the fund by certified mail no later than  
139 one calendar year after the date the claim is initially filed or, in the case  
140 of a contested claim, no later than one year after the finding of  
141 compensability, and provided further, the employer or its insurer  
142 presents any vouchers and information that the Treasurer shall  
143 require, and (2) for claims filed prior to the effective date of this act, the  
144 employer or its insurer notifies the custodian of the fund by certified  
145 mail no later than one calendar year from the effective date of this act,  
146 and provided further, the employer or its insurer presents any  
147 vouchers and information that the Treasurer shall require.

148 Sec. 3. Subsection (a) of section 31-310 of the general statutes is  
149 repealed and the following is substituted in lieu thereof:

150 (a) For the purposes of this chapter, the average weekly wage shall  
151 be ascertained by dividing the total wages received by the injured  
152 employee from the employer in whose service [he] the employee is  
153 injured during the fifty-two calendar weeks immediately preceding the  
154 week during which [he] the employee was injured, by the number of  
155 calendar weeks during which, or any portion of which, the employee  
156 was actually employed by the employer, but, in making the  
157 computation, absence for seven consecutive calendar days, although

not in the same calendar week, shall be considered as absence for a calendar week. When the employment commenced otherwise than at the beginning of a calendar week, that calendar week and wages earned during that week shall be excluded in making the computation. When the period of employment immediately preceding the injury is computed to be less than a net period of two calendar weeks, the employee's weekly wage shall be considered to be equivalent to the average weekly wage prevailing in the same or similar employment in the same locality at the date of the injury except that, when the employer has agreed to pay a certain hourly wage to the employee, the hourly wage so agreed upon shall be the hourly wage for the injured employee and [his] the injured employee's average weekly wage shall be computed by multiplying the hourly wage by the regular number of hours that is permitted each week in accordance with the agreement. For the purpose of determining the amount of compensation to be paid in the case of a minor under the age of eighteen who has sustained an injury entitling [him] the minor to compensation for total or partial incapacity for a period of fifty-two or more weeks, or to specific indemnity for any injury under the provisions of section 31-308, the commissioner may add fifty per cent to [his] the minor's average weekly wage, except in the case of a minor under the age of sixteen, the commissioner may add one hundred per cent to [his] the minor's average weekly wage. When the injured employee is a trainee or apprentice receiving a subsistence allowance from the United States because of war service, the allowance shall be added to [his] the injured employee's actual earnings in determining the average weekly wage. Where the injured employee has worked for more than one employer as of the date of the injury and the average weekly wage received from the employer in whose employ [he] the employee was injured, as determined under the provisions of this section, are insufficient for [him] the employee to obtain the maximum weekly compensation rate from the employer under section 31-309, prevailing as of the date of the injury, [his] the employee's average weekly wages shall be calculated upon the basis of wages earned from all such employers in the period of concurrent employment not in excess of

193 fifty-two weeks prior to the date of the injury, but the employer in  
194 whose employ the injury occurred shall be liable for all medical and  
195 hospital costs and a portion of the compensation rate equal to seventy-  
196 five per cent of the average weekly wage paid by [him] the employer  
197 to the injured employee, after such earnings have been reduced by any  
198 deduction for federal or state taxes, or both, and for the federal  
199 Insurance Contribution Act made from such employee's total wages  
200 received from such employer during the period of calculation of such  
201 average weekly wage, but not less than an amount equal to the  
202 minimum compensation rate prevailing as of the date of the injury.  
203 The remaining portion of the applicable compensation rate shall be  
204 paid from the Second Injury Fund, [upon submission to the Treasurer  
205 by the employer or the employer's insurer of] provided (1) for claims  
206 filed on or after the effective date of this act, the employer or its insurer  
207 notifies the custodian of the fund by certified mail no later than one  
208 calendar year after the date the claim is initially filed or, in the case of a  
209 contested claim, no later than one year after the finding of  
210 compensability, and provided further, the employer or its insurer  
211 presents such vouchers and information as the Treasurer may require,  
212 and (2) for claims filed prior to the effective date of this act, the  
213 employer or its insurer notifies the custodian of the fund by certified  
214 mail no later than one calendar year from the effective date of this act,  
215 and provided further, the employer or its insurer presents any  
216 vouchers and information that the Treasurer may require. In cases  
217 [which] that involve concurrent employment and in which there is a  
218 claim against a third party, the injured employee or the employer in  
219 whose employ the injury was sustained or the employer's insurer shall  
220 advise the custodian of the Second Injury Fund if there is a third party  
221 claim, and the employee, employer or employer's insurer shall pursue  
222 its subrogation rights as provided for in section 31-293 and shall  
223 include in its claim all compensation paid by the Second Injury Fund  
224 and shall reimburse the Second Injury Fund for all payments made for  
225 compensation in the event of a recovery against the third party.

***LAB***      *JOINT FAVORABLE SUBST.*